

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

In re:

Willie C. Mosley and Denise Y. Mosley,

Bankruptcy Case No.: 08-04879-8-

Soc. Sec. Nos. xxx-xx-7162 & xxx-xx-4126

Mailing Address: 3617 Pritchard Court, Raleigh, NC 27616-

Debtors.

Willie C. Mosley and Denise Y. Mosley,

Plaintiffs, A.P.

No.: _____

HSBC Mortgage Services,

Defendant.

VERIFIED COMPLAINT TO VALUE COLLATERAL

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. Section 157, and that the court has jurisdiction pursuant to 28 U.S.A. Sections 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. 506, and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by HSBC Mortgage Services.
3. The Plaintiffs are filed this bankruptcy case on July 22, 2008 seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant HSBC Mortgage Services is a corporation and/or a partnership with an office and principal place of business located at P.O. Box 21188, Eagan, MN 55121 and/or 636 Grand Regency Blvd., Brandon, FL 33510 .This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Section 157 and 1334 and 11 U.S.C. Section 506.
5. The Plaintiffs own real property located at 3617 Prichard Court, Raleigh, NC 27616. The legal description of the property is as follows: BEING all of Lot 302, Mitchell Mill Subdivision, Phase 8, as Recorded in Book of Maps 2001, Page 1229, Wake County Registry. The tax map or parcel ID No. is: 1747359505
6. Wake County Tax Collector holds a first lien on such property for unpaid real property taxes with an payoff balance, as of the date this case was filed in the amount of approximately \$4,518.76.

7. HSBC Mortgage Services holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of \$203,221.62. The Deed of Trust was originally given to and held by Decision One Mortgage Company LLC. This Deed of Trust was recorded on 8/5/05 in Book 11514 at Page 2216, County Registry of Deeds.
8. HSBC Mortgage Services holds a third Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of \$51,533.01. This Deed of Trust originally given to and held by Decision One Mortgage Company LLC. This Deed of Trust was recorded on 8/5/05 in Book 11514 at Page 2234, County Registry of Deeds.
9. The fair market value of the said property is not greater than \$186,184.00.
10. Pursuant to 11 U.S.C. 506 of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with HSBC Mortgage Services, secured by a third Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. 506(d), the lien securing said loan is void.

WHEREFORE, the Plaintiffs pray the Court find that said claim held by HSBC Mortgage Services, which is secured by a third Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order HSBC Mortgage Services to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: November 5, 2008

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
Edward Boltz
Attorney for the Plaintiffs
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Raleigh, N.C. 27615
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Debtors.

**Willie C. Mosley and
Denise Y. Mosley,**

A.P. No.: _____

Plaintiffs,

HSBC Mortgage Services,

Defendant.

VERIFICATION OF COMPLAINT TO VALUE COLLATERAL

We, Willie C. Mosley and Denise Y. Mosley, the Plaintiffs in the above captioned case, hereby state, under penalty of perjury, that, to the best of our knowledge, that:

1. Wake County Tax Collector holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$4,518.76.
2. HSBC Mortgage Services holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$203,221.62. The Deed of Trust was originally given to and held by Decision One Mortgage Company LLC. This Deed of Trust was recorded on 8/5/05 in Book 11514 at Page 2216, County Registry of Deeds.
3. HSBC Mortgage Services holds a third Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$51,533.01. This Deed of Trust originally given to and held by Decision One Mortgage Company LLC. This Deed of Trust was recorded on 8/5/05 in Book 11514 at Page 2234, County Registry of Deeds.
4. The fair market value of the said property is not greater than \$186,184.00.

Dated: 10/23/08

s/Willie C. Mosley

Willie C. Mosley

Dated: 10/23/8

s/ Denise Y. Mosley

Denise Y. Mosley

Notarization:

Sworn and subscribed before me on 10/23/08

Affix Seal or
Stamp

S/Carrie L. Harden

Signature of Notary Public

Commission expires: 03/16/2013